

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.**

RSA No. 1504 of 1985

DATE OF DECISION: 16 .5.2007

Allahabad Bank

...Appellant

VERSUS

Subhash Chand etc.

...Respondents

CORAM

HON'BLE MR.JUSTICE PERMOD KOHLI

PRESENT: Mr.R.K.Mahajan, Advocate for the appellant

Mr.H.N.Mehtani, Advocate for the respondents

Permod Kohli,J.

This Regular Second Appeal is taken up for final hearing. It transpires from the record that no substantial question of law was framed at the time of admission of this appeal. From the memo of appeal and the judgment impugned, I am of the considered view that following substantial question of law is

involved in this appeal:-

Whether deposit made in the loan account by borrower by transfer from his Saving Bank Account to the loan account constitutes acknowledgment of debt?

Briefly stated the facts leading to the present appeal are that the appellant-Bank instituted a suit for recovery of Rs.4,875.45 on 30.8.1980. The respondents/defendants appeared and filed a written statement of defence. The trial court framed as many as seven issues. The trial court decreed the suit vide its judgment and decree dated 5.12.1983. The defendants preferred an appeal before the Additional District Judge, Karnal, being Civil Appeal No.4/13 of 1984. The appellate court concurred with the findings of the trial court on all the issues, except issue no.6 which relates to limitation for filing the suit. The appellate court held that the last entry relating to the deposit of a sum of Rs.150 on 11.4.1980 by the guarantors would not constitute an acknowledgment of debt by the borrower, and thus, will not extend the period of limitation. The Appellate Court also did not approve the findings of the trial court regarding the deposit of Rs.27/- on 22.11.1979 by way of transfer from the saving Bank Account of the Borrower maintained in the same Bank to the loan account, and thus, allowed the appeal by dismissing the suit being barred by time. It is this judgment of the appellate

court dated 1.2.1985 which is assailed before this Court in the present Regular Second Appeal.

It has been vehemently contended on behalf of the appellant-Bank that there is a clear admission regarding the deposit of Rs.27/- by the borrower from his Saving Bank Account by way of transfer to the loan account on 22.11.1979, which amounts to acknowledgment of debt. He has further stated that even the deposit by the guarantor on 11.4.1980 into the loan account also constitutes an acknowledgment of debt and thus, extended the period of limitation.

I have heard the learned counsel for the parties. Even if the deposit of Rs.150/- made on 11.4.1980 by the guarantor is ignored, still the deposit of Rs.27/- on 22.11.1979 by way of transfer from the Savings Bank Account of the borrower to the loan account cannot be ignored. There is a categorical averment to this effect in paragraph 5 of the plaint filed by the plaintiff-Bank and the contents of this paragraph have not been specifically denied in the written statement filed by the defendants-respondents. For the sake of convenience, contents of paragraph 5 of both the plaint and the written statement are reproduced as under:-

Paragraph 5 of the plaint

“5.That the defendant no.1 paid only a sum of Rs.2577.00 i.e. Rs.175/- on 30/4/76, Rs.175/-on

31/5/76, Rs.175/- on 29/6/76, Rs.175/- on 16/9/76, Rs.1500/- on 11/12/76, Rs.200/- on 16/5/78, Rs.27/- by transfer from saving Bank account on 22/11/79 and Rs.150/- on 11/4/80. (Emphasis supplied) A certified copy of the statement of accounts showing the detail of debit/credit entries is attached herewith which may kindly be read as part of this plaint.

Paragraph 5 of the written statement

5.That para no.5 of the plaint is wrong. The defendant no.1 had his saving account with the Bank. (Emphasis supplied)T.he defendant no.1 never took any loan from the Bank. No copy of statement of accounts has been supplied to the defendant no.1 by the plaintiff.”

Learned counsel appearing for the respondents submits that there is a complete denial by the defendant in the written statement and thus, the allegation regarding deposit of a sum of Rs.27/- from the Saving Bank Account stands refuted. I am unable to accept this contention for the simple reason that the denial required under law should be a specific denial envisaged under Order VIII Rules 3, 4 and 5 of the Code of Civil Procedure. Whenever there is a specific allegation of fact, it must be specifically denied by the defendant in the written statement. Any evasive denial cannot be accepted as a denial and

such a denial amounts to admission of fact. The Appellate Court has committed glaring illegality in dismissing the suit on the question of limitation in the presence of entry dated 22.11.1979.

Consequently, I allow this appeal and set aside the judgment and decree dated 1.2.1985 passed by the Addl. District Judge, Karnal dismissing the suit of the appellant-Bank, with costs throughout. However, the appellant-Bank shall be entitled to interest only at the rate of 6% per annum from the date of institution of the suit till the amount is realized.

(PERMOD KOHLI)
JUDGE

16.5.2007
MFK

NOTE: Whether to be referred to the Reporter or not: YES/NO